

STATE OF UTAH
DEPARTMENT OF
ADMINISTRATIVE
SERVICES

DIVISION OF RISK
MANAGEMENT

**Special points of
interest:**

- Property insurance premiums—54% below other states
- General liability premiums—29% below the national average
- Workers compensation premiums—50% below other states' averages
- New faces in the Loss Control Section

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RiskWatch



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Roger Livingston, State Risk Manager **Rating Our Rates, Deloitte's Cost of Risk Survey**

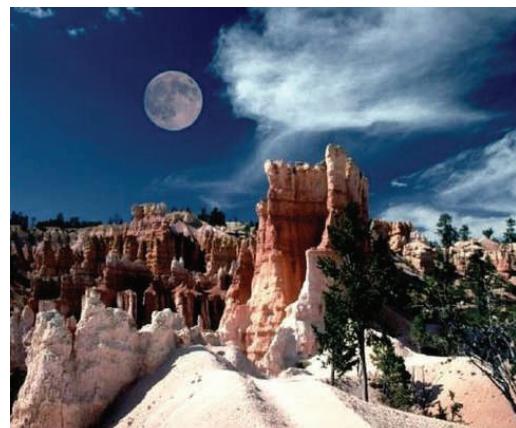
While it is generally known that the rates we charge you are far less than what you would otherwise pay for private insurance, you may be interested to know how your premiums here in the State of Utah compare with those of other states. Deloitte, a national accounting, consulting, and actuarial firm, recently completed an analysis of our rates via a "cost of risk survey". Their findings were quite impressive.

In summary, the premiums that you, our customers, pay for property insurance are 54% below the comparative states' average. The premiums you are charged for general liability coverage are 29% below the national average. Furthermore, the premiums paid by our State agencies for workers compensation coverage are 50% below the average of other states.

I share these comparisons with you, not to be self-congratulatory, but rather to express my appreciation to all of you for jobs very well done. The successes we have experienced in keeping

our costs down and obtaining favorable rates are a direct result of your cooperative efforts in effective loss control and claims management. Our Risk Pool is a partnership, and we are doing extremely well because of your commitment.

It is an honor to serve as your State Risk Manager. Thanks to each of you for the great work you are doing. Please let us know of any concerns you have and how we can better serve you.



New Faces in Loss Control - Brian Nelson, Loss Control Manager

We are pleased to announce that Karen Peterson and Sol Garcia have replaced Robert Binns and Richard Scott, who recently and inexplicably chose the life of retirement and leisure over the constant excitement of risk management.

Sol Garcia brings extensive human resource experience to our office. She has served as a charter school board member and president. Sol will serve as our HR Consultant for charter schools. You can contact Sol via sgarcia@utah.gov.

Karen Peterson joined us on October 6th. Before joining Risk Management, Karen worked for Kennecott Copper, UOSH, and Salt Lake City. Karen will serve as our Fire & Life Safety Consultant. Her email address is karenpeterson@utah.gov.



Title VII Coverage Obligations - Connie Reed, HR Consultant

Our policy and underwriting standards require all covered entities to promptly send us copies of all charges of discrimination received from the Utah Anti-Discrimination and Labor Division (UALD) or the Equal Employment Opportunity Commission (EEOC).

Upon our receipt of a charge, a claim will be set up. We will then assist in responding to the charge. If mediation is a viable option, we will attend with you.

If the charge is settled, we will pay the settlement, subject to the deductible provisions of the policy. If the charge is not resolved in mediation, the UALD or EEOC will conduct a non-adversarial investigation that may take 12 months or more.

If a covered entity fails to involve Risk, or enters into a settlement agreement without our participation and consent, all legal expenses and settle-

ment costs may be borne by the covered entity.

The UALD or EEOC will ultimately render a finding of "cause" or "no cause". An Assistant Attorney General is generally not assigned to the claim unless and until the charging party or the covered entity appeals that decision.

While we hope to avoid claims, we are here to help you should a claim arise.

Foul Ball, Foul Result - Morris Haggerty, Assistant Attorney General

**Visit our website
for more
information and
a sample
indemnification
agreement.**



Recently enacted House Bill 332 (codified at Utah Code §53A-3-413, -414) "requires all public school buildings and grounds to be made available as a civic center to district residents for supervised recreational activities and meetings."

The bill further provides that "a local school board may not refuse the use of a civic center for other than school purposes unless it determines that the use interferes with a school function or purpose." *Id.* Local school boards are also required to "adopt policies for the use of civic centers." UCA §53A-3-414(2)(b).

Effective policies and procedures can limit liabilities that may arise from the use of school facilities. Those policies and procedures should require that users of facilities signed indemnity agreements and cer-

tificates of insurance.

An actual event is illustrative. A school district allowed the local Little League to use its baseball field. During an evening Little League game, a foul ball hit a passing motorist in his convertible.

The motorist filed an injury claim, which the district forwarded to Risk Management. The district also forwarded a \$2,000,000 Certificate of Insurance it had obtained from Little League's insurer. Unfortunately, an indemnity agreement was never executed.

Risk tendered the claim to Little League's insurer, who responded, "Certificates of Insurance issued by producing insurance agents do not afford coverage in any fashion . . ." The insurer added that it would not indemnify the dis-

trict, which was left holding the ball without the benefit of insurance it thought it had.

Little League's certificate of insurance alone was useless. An effective indemnity agreement would have required the Little League and its insurer to pay for damages arising out of its use of the district's facilities, unless no fault could be attributed to Little League.

Risk Management can help with drawing up indemnity agreements. We have also made arrangements with Fred A. Moreton Company to facilitate event insurance at very reasonable rates, as low as \$100—\$200. Inform your third party users to contact Nadine Guss at (801) 715-7125 to obtain insurance for private functions in school buildings or on school property.

ADA Amendment Act Update - Melissa Frost, ADA Consultant

On September 25, 2008, President Bush signed the ADA Amendments Act ("ADAAA"), which will become effective January 1, 2009.

In addition to rejecting several U.S. Supreme Court decisions that narrowed the definition of disability, the ADAAA removes the consideration of mitigating measures (except ordinary eyeglasses and contact lenses) in "disability" determinations.

Many well-established major life activities are specifically mentioned in the bill. Some less-established functions, such as thinking, concentrating, and normal cell growth, are also included.

Episodic impairments that substantially limit one or more major life activities, when active, will result in ADA protection, even if the illness is not active or is in remission.

Transitory impairments, defined as health conditions lasting six months or less, will not give rise to "regarded as" protection. Accommodations will not be required for individuals who are "regarded as" having an impairment.

The EEOC and the Department of Justice are currently drafting regulations consistent with the Congressional intent of the ADAAA. Stay tuned.



Fire Hazard Recall Notice - Karen Peterson, Fire/Life Safety Consultant

The Consumer Product Safety Commission recently announced a product recall of Candlesense Warmers.

The warmers are manufactured by Provo Craft & Novelty, Inc., of Spanish Fork, Utah. Approximately 730,000 of these warmers were sold in 2006 - 2007.

According to the notice, the internal heating element can detach and melt the bottom of the plastic casing, which can in turn ignite or scorch the surface on which the candle warmer is placed.

Provo Craft has received 11 reports of incidents in which the heating elements detached,

including two fires and nine incidents of property scorching.

Please remember that open flames, candles, and burning incense are prohibited in state facilities. Beware also of plug-in air fresheners, which can become hot enough to melt wire casings and start a fire.



Cold Weather, Frozen Pipes - Stephen Hewlett, Assistant Director

Winter is upon us, and conscientious property managers are already making efforts to reduce heating costs. Sometimes, however, those efforts result in greater costs.

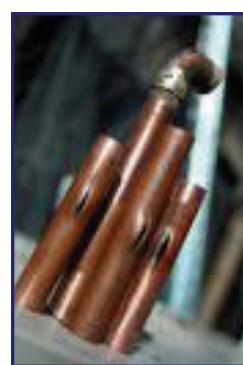
Anyone who has experienced interior flooding from a broken water pipe due to freezing temperatures understands the importance of providing suffi-

cient heat to pipe spaces, including attics, crawl spaces, and exterior walls.

Almost yearly, the Risk Fund is subject to property damage claims resulting from frozen, broken water pipes. Many of these claims arise during long weekends and extended school holiday breaks, when buildings are unoccupied and unmoni-

tored. That's when property managers tend to adjust thermostats downward. Sudden and dramatic cold spells arrive; frozen pipes follow.

Please be mindful of this significant risk and pass this information along to ensure that informed decisions will be made during the cold months ahead.



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RISK HAPPENINGS

- **The Self-Inspection Survey (SIS) is online and available at www.risk.utah.gov.**
- **A Symposium for HR Professionals on Employment Liability and Legal Issues in the Public Sector, December 9, 2008. Registration is open for this event at www.risk.utah.gov.**
- **ADA Roundtable, January 27, 2009. Register for this event at www.risk.utah.gov.**

Transporting Fuel - Tom Merrill, Safety Consultant

It has come to our attention that some school custodians have been using their private vehicles to transport and replenish propane gas cylinders and gasoline containers.

Sometimes we forget that regulatory requirements make clear distinctions between the activities of a private homeowner and the actions of an employee.

To be in compliance with safety regulations and eliminate the possibility of significant harm, the following guidelines must be followed:

- Drivers must have current driver licenses, and must have completed defensive driver training.
- Use only open bed pickup trucks or open trailers to transport fuel.
- Secure all propane tanks

in an upright position with the valve orifice cap in place.

- Gasoline containers must be DOT- and UL-approved and must be secured.
- Limit transports to 5 propane cylinders or 5 five-gallon gasoline containers.
- Provide specialized training about fuel hazards.
- Provide a minimum 18 lb. B/C extinguisher in the vehicle.

Our Guiding Principles - Roger Livingston, Division Director

Every entity of a Risk Fund benefits from the effective loss control efforts of its associates. Conversely, casual attention to risk issues may jeopardize the Risk Fund and all of its participants. We are, indeed, partners in the important work of protecting our assets and the individuals who are associated with those assets.

In that spirit of partnership, I would like to share our "Guiding Principles" and invite all of you to join us in implementing these principles.

VALUES:

1. We are results-oriented and we strive for excellence.
2. We are team players.

3. We respect loyalty—to the public trust, our customers, and our colleagues.
4. We encourage innovation—continually reaching for "best practices".
5. We adapt and learn from our mistakes.

COMMITMENT:

1. To honesty, fairness, and integrity in our business practices.
2. To the highest standards in customer service, loss control, and claims management.
3. To execution over undue deliberation.
4. To an environment of challenge, respect, and growth for employees.

5. To continually increase the value and worth of our division to our customers.

OUR MISSION:

To protect State assets, promote safety, and prevent losses through proactive, collaborative loss control and claims management in partnership with the participating entities of the Risk Fund.

It is my sincere hope that we will continue to work together with trust, energy, respect, and innovation to make a difference among and within our interconnected spheres of influence. We are grateful for efforts and your association.